

AO 440 (Rev. 10/93) Summons in a Civil Action

ORIGINAL

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United States District Court

MIDDLE

DISTRICT OF

PENNSYLVANIA

Michael Norwood

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER: 1:CV-01-1005

Donald Romine

TO: (Name and address of defendant)

(SEE COMPLAINT)

FILED
HARRISBURG

OCT 05 2001

MARY E. D'ANDREA, CLERK
Per *[Signature]*
DEPUTY CLERK

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Michael Norwood
U.S. Penitentiary at Lewisburg
P.O. Box 1000
Lewisburg, PA 17837

an answer to the complaint which is herewith served upon you, within sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MARY E. D'ANDREA
CLERK

July 20, 2001
DATE

[Signature]
(BY) DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RETURN OF SERVICE OF PROCESS

PLAINTIFF MICHAEL NORWOOD COURT CASE NUMBER 1:CV-01-1005
DEFENDANT DONALD ROMINE TYPE OF PROCESS SERVICE

SERVE DONALD ROMINE, Warden, U.S. Penitentiary, Lewisburg, PA
(Name individual, company; corporation, etc. to be served)

AT U.S. Penitentiary, RD# 5, Lewisburg, PA 17837
(Show Address)

SPECIAL INSTRUCTIONS OR OTHER INFORMATION REGARDING SERVICE _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT:

____ I have personally served individual, company or corporation above.
____ I have made service by mail as authorized by state law to the individual, company or corporation above. Appropriate state law authorizing this type of service is _____ . If certified mail was authorized, attach green cards to this form.

X I have legal evidence of service, described under Remarks and attached hereto.
(Domiciliary service, Substituted service.)

____ I am unable to serve the process. (See Remarks)

NAME OF PERSON SERVED: DONALD ROMINE

TITLE (IF ANY) OF PERSON SERVED: Warden

ADDRESS WHERE SERVED: RD# 5, U.S. Penitentiary, Lewisburg, PA 17837

DATE AND TIME OF PERSONAL SERVICE: _____

REMARKS: See order of U.S. Magistrate Judge Smyser directing
U.S. Marshal to serve summons and amended complaint on person of defendant

October 2, 2001
Date

Michael Norwood
Signature of Process Server

RETURN THE ORIGINAL OF THIS FORM WITH THE ORIGINAL SUMMONS FORM TO:
OFFICE OF THE CLERK OF COURT, U.S. DISTRICT COURT
(Clerk's address in which the assigned judge is located. Refer to the
Notice of Judicial Assignment form.)

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL NORWOOD : CIVIL NO: 1:CV-01-1005
Plaintiff, :
 : (Judge Caldwell)
v. :
 : (Magistrate Judge Smyser)
DONALD ROMINE, :
Defendant :

FILED
HARRISBURG, PA

ORDER

SEP 28 2001

MARY E. D'ANDREA, CLERK
PER DEPUTY CLERK

On June 6, 2001, the plaintiff, a federal prisoner proceeding *pro se*, commenced this action by filing a complaint. On June 11, 2001, the plaintiff filed an amended complaint.

On July 16, 2001, the plaintiff filed a motion seeking an order directing the United States Marshal to serve his amended complaint on the defendant. By an Order dated July 20, 2001 that motion was denied. Because the plaintiff is not proceeding *in forma pauperis* in this case, we determined that the plaintiff must serve his amended complaint on the defendant in accordance with Fed.R.Civ.P. 4. We noted that pursuant to Fed.R.Civ.P. 4(d) the plaintiff may request that the defendant waive service of the summons and complaint. We further noted that if the plaintiff follows the procedures of Fed.R.Civ.P.

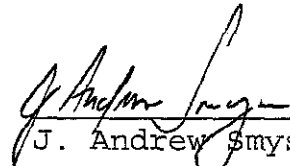
4(d) and requests that the defendant waive service of the summons and complaint and the defendant refuses that request, we would consider ordering the United States Marshal to serve the defendant and order the defendant to show cause why he should not pay the cost of service.

On August 27, 2001, the plaintiff filed a motion for an order directing the United States Marshal to serve the amended complaint on the defendant and directing that the defendant bear the cost of such service. The plaintiff attached to this motion copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, Duty to Avoid Unnecessary Costs of Service of Summons, and Waiver of Service of Summons forms which he asserts he sent to the defendant on July 24, 2001 and to which the defendant has not responded.

We will direct the United States Marshal to serve the defendant with the amended complaint. However, we will not order the defendant to pay the cost of service. Upon further review of Rule 4(d), we conclude that the duty to avoid

unnecessary costs of serving the summons does not apply to an employee of the United States.

AND NOW, this 28th day of September, 2001, IT IS HEREBY ORDERED that the plaintiff's motion (doc. 8) for an order directing the United States Marshal to serve the summons and amended complaint on the defendant and for the defendant to bear the costs of such service is GRANTED IN PART. The United States Marshal is directed to serve the summons and amended complaint on the person of the defendant.


J. Andrew Smyser
Magistrate Judge

Dated: September 28, 2001.